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NO. 92-1126

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

GEORGIA GOODIN, Petitioner

V.

LOUIS W. SULLIVAN, SECRETARY
OF HEALTH AND HUMAN SERVICES,
Respondent

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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APPENDIX D

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

GEORGIA GOODIN (SSN: 431-66-5184) — PLAINTIFF

V. NO. J-C-88-175

LOUIS W. SULLIVAN, M.D., Secretary of the Department of Health & Human Services — DEFENDANT

ORDER

Plaintiff, Georgia Goodin, has filed the pending motion for attorney's fees and costs pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412 (d). The Court has reviewed the entire record and finds that the position of the Secretary was not substantially justified. Thus, an award of attorney's fees and costs pursuant to EAJA is not unjust.

Plaintiff's unopposed motion for EAJA fees and costs is granted. Her attorney is awarded fees in the amount of $12,150.00 (121.50 hours X $100.00 an hour), plus costs in the amount of $1,389.12.

IT IS SO ORDERED this 6th day of September, 1991.

/s/ Henry Woods
HENRY WOODS, U. S. District Judge

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

GEORGIA GOODIN (SSN: 431-66-5184) PLAINTIFF

V. NO. J-C-88-175

LOUIS W. SULLIVAN, M.D., Secretary of the Department of Health & Human Services DEFENDANT

ORDER

INTRODUCTION. On June 25, 1991, plaintiff, Georgia Goodin, filed a motion for attorney's fees and costs pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. 2412. The Secretary submitted no response to this motion. On September 9, the Court granted plaintiff's unopposed motion and awarded her attorney his fees and costs. Fourteen days later, the Secretary filed the pending motion to alter the order awarding her attorney his fees and costs. The Court finds, after reviewing the motion and plaintiff's response, that the motion should be, and is, granted. The order granting EAJA fees

and costs is withdrawn. No fees or costs will be awarded.

FACTS. The relevant facts, most of which have been agreed to by the parties, are set out below:

1. In April, 1976, plaintiff filed an application for disability insurance benefits ("benefits") with the Social Security Administration ("SSA"), alleging disability since March, 1970.

2. The SSA denied her application initially and upon reconsideration.

3. Following a subsequent hearing, an administrative law judge denied her application, finding that she was not disabled at any time prior to the September, 1973 expiration of her insured status.

4. Plaintiff sought judicial review of the administrative action by filing a complaint in federal court.

5. In September, 1979, the Court affirmed the Secretary's denial of benefits.

6. The decision of the district court was affirmed on appeal.

7. In 1980, she filed a second application for benefits.

8. The SSA denied this application initially and upon reconsideration.

9. Following another hearing, an administrative law judge denied this application, finding that the prior decision was res judicata as to the existence of a disability on, or before, the day her insured status expired.

10. In May, 1987, plaintiff filed a third application for benefits, again alleging disability since March, 1970.

11. This application was filed after the discovery and removal of a brain tumor found to have been in existence prior to, or at the time of, the expiration of her insured status.

12. The SSA again denied this application initially and upon reconsideration.

13. She requested, but was denied, a hearing on this application.

14. In the opinion of the administrative law judge, the prior decision could not be re-opened because the material facts presented in the third application were the same as those presented in the first application.

15. The Appeals Council denied her request for further review, noting that the additional evidence was immaterial and irrelevant to the matters decided in May, 1977.

16. In July, 1988, plaintiff sought judicial review of the administrative action in federal court.

17. The Court again dismissed her complaint.

18. The Court found that a "final decision" had not been made by the

Secretary, and the Court was therefore without jurisdiction to entertain the complaint.

19. Assuming, alternatively, that a "final decision" had been made, the Court was unable to find that the Secretary, by considering the additional evidence she had submitted, had reviewed the prior application "on the merits."

20. She sought no other judicial review.

21. In March, 1988, after her third application had been denied administratively but before she sought judicial review of the action, plaintiff filed a fourth application for benefits.

22. The SSA apparently denied the application initially and upon reconsideration, and an administrative law judge denied the application without a hearing on the basis of res judicata.

23. The Appeals Council subsequently remanded the application to the

administrative law judge for reconsideration due to changes in the disability law and evidence that she had a slow-growing tumor as of approximately 1970.

24. Her on-going request for benefits was thus re-opened back to the May, 1987 application, i.e., the third application.

25. The administrative law judge again denied the application, finding that plaintiff was not disabled.

26. On May 31, 1991, the Appeals Council reversed the decision of the administrative law judge and awarded her benefits from March, 1970 on the basis of her May, 1987 application.

27. On June 19, 1991, plaintiff filed a motion to dismiss containing the following representations:

> On 5/3/87, plaintiff filed her application for Title II benefits, and on 11/18/88, the Court entered its order denying the claim. However, on a subsequent application filed 3/16/88, the plaintiff

> prevailed and the Appeals Council reversed its previous denial of benefits, finding that plaintiff had been disabled since March of 1970. Thus, the SSA reopened and awarded benefits based on the 5/3/87 application which was the subject of this civil action.
>
> Since the defendant has agreed to pay disability benefits to the plaintiff in this matter based on the 5/3/87 application, the matter should be dismissed.

28. The motion was granted two days later.

29. On June 25, 1991, she filed a motion for attorney's fees and costs pursuant to the EAJA.

30. The motion was granted, and her attorney was awarded a fee in the amount of $12,150.00, plus costs in the amount of $1,389.12.

31. Fourteen days later, the Secretary filed the pending motion to alter the previous order.

ARGUMENTS OF THE PARTIES. In the motion to alter, the Secretary takes the position that plaintiff was not a "prevailing party" for purposes of the

EAJA. The Court quotes liberally from the brief submitted by the Secretary:

> On November 18, 1988, the court determined it had no jurisdiction to review the Secretary's decision not to reopen and dismissed plaintiff's Complaint. Plaintiff received no benefits. Plaintiff took no judicial action on her claim for benefits and did not seek further judicial review on the request for reopening. Thus, plaintiff's district court action on the issue of reopening terminated on November 18, 1988, and her claim for benefits was never before this Court. The EAJA provides that a court "may award reasonable fees and expenses . . . to the prevailing party in any civil action. . . in any court having jurisdiction in such action." See 28 U.S.C. § 2412 (b).
>
> Before a claimant can [become] a "prevailing party," she must obtain those benefits which she sought on the original appeal to the district court. [Citation omitted]. Parties may be considered prevailing if they have succeeded on any significant issue in litigation which achieved some of the benefits the parties sought in bringing suit. [Citation omitted]. Under the EAJA, "benefit" means more than an enhanced legal position because material relief must also be present. [Citation omitted]. Parties are ineligible for attorney fees under the EAJA where no benefits [have] been garnered in the real world, outside the judicial/ administration process. [Citation omitted].

> In the case at hand, plaintiff did not receive benefits based on her only Complaint before this Court, which was filed on July 8, 1988 and dismissed on November 18, 1988 because this Court did not have jurisdiction to consider it. As noted above, plaintiff's Complaint was based on the May 5, 1987 application. Further, it was solely plaintiff's March 16, 1988 application which led to an award of benefits without judicial proceedings. Plaintiff was not awarded benefits based upon her claim which was brought before this Court and dismissed for lack of jurisdiction. No civil action was ever brought which led to an award of benefits. Thus, under the EAJA provisions and relevant caselaw, plaintiff is not a "prevailing party" in a "civil action," and accordingly, is not eligible for attorney fees under the EAJA.

Brief at 4-5.

Plaintiff disagrees. She maintains that the term "prevailing party" should be given a broad interpretation, that being, an interpretation that encompasses any situation in which a claimant successfully obtains a settlement of her claim. By this interpretation, she was a "prevailing party" because the Secretary eventually awarded her benefits. Because the other

requirements of § 2412 (d) (1) (A) were satisfied, she maintains that her attorney was entitled to his fees and costs.

ANALYSIS. Plaintiff represents that an analogous case is Green v. Bowen, 877 F. 2d 204 (2nd Cir. 1989). Accepting, for purposes of this Order, that Green is a correct statement of the law, a three-part inquiry is necessary. The Court must first determine whether plaintiff was a "prevailing party" under § 2412 (d) (1) (A) of the EAJA. See Id. at 206. If she was a "prevailing party," the Court must determine whether the position of the Secretary was "substantially justified." See Id. at 207. If the position of the Secretary was not "substantially justified," the Court must then determine whether the activity in federal court for which she seeks attorney's fees and costs under the EAJA was a "contributing factor" in bringing about the administrative

action which ultimately resulted in an award of benefits. See Id.

For purposes of this Order, the Court finds that plaintiff has satisfied the first two parts of the Green inquiry. She was a "prevailing party," and the position of the Secretary was not "substantially justified." However, for the reasons that follow, she has failed to satisfy the third part of the Green inquiry.

Plaintiff began her attempt to obtain benefits in 1976. The fifteen year process by which she ultimately obtained these benefits took her into federal court on two separate occasions. Her first request for judicial review occurred after the Secretary denied her first application for benefits. The Court upheld the decision of the Secretary, and the Court of Appeals affirmed. Nine years later, plaintiff made her second request for judicial review after the Secretary denied her third application for benefits. The

Court again upheld the decision of the Secretary, and she sought no further judicial review. This brief recitation of the salient facts conclusively demonstrates that plaintiff's two requests for judicial review proved fruitless. Her on-going battle for benefits was not helped in any way by her failed attempts to obtain judicial review. The Court did nothing to cause the Appeals Council to reverse the decision of the administrative law judge and award her benefits from March, 1970. Rather, the Appeals Council apparently recognized that changes had occurred in the disability law and that there was some evidence she had a slow-growing tumor as of approximately 1970. Thus, the activity in federal court for which she seeks attorney's fees and costs under the EAJA was not a "contributing factor" in bring about the administrative action which ultimately resulted in an award of benefits.

CONCLUSION. The motion to alter is granted. With some reluctance,[1] the order granting EAJA fees and costs is withdrawn. No fees or costs will be awarded.

IT IS SO ORDERED this 17th day of January, 1992.

/s/ Henry Woods
HENRY WOODS, U. S. District Judge

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1. The Court is reluctant to withdraw the order for two reasons. First, the explanation given by the Secretary for failing to respond to the motion for EAJA fees and costs is weak. Second, the conduct of plaintiff's attorney is a model of diligent representation.